



Disadvantaged Business Enterprise Program Plan

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Table of Contents

Disadvantaged Business Enterprise Plan	6
POLICY STATEMENT (49 CFR Part 26.3)	6
CHAPTER A – GENERAL	7
Section 1.01 Objectives (49 CFR Part 26.1).....	7
GDOT Disadvantaged Business Enterprise (DBE) Program Objectives:	7
Section 1.02 Federal Funding Regulations & GDOT Applicability (49 CFR 26.3).....	8
Section 1.03 GDOT’s Assurances (49 CFR 26.7)	9
Section 1.04 Definitions and Terms (49 CFR 26.5).....	10
CHAPTER B – RESPONSIBILITIES FOR DBE PROGRAM FOR FEDERALLY ASSISTED CONTRACTING FUNCTIONS. 15	
Section 2.01 Responsibilities & Implementation of DBE Program	15
Section 2.02 Responsibilities of the DBE Liaison Officer (49 CFR 26.25)	16
Section 2.03 RESPONSIBILITIES & FUNCTIONS:.....	18
Duties of the Office of Construction Bidding Administration, Office of Construction, District Contracts Administration, and District Offices (49 CFR 26.37).....	18
Section 2.04 Reconsideration Official (49 CFR 26.53(d)(2)).....	21
CHAPTER C: Administrative Requirements	22
Section 3.01 DBE Financial Institutions (49 CFR 26.27).....	22
Section 3.02 DBE Directory (49 CFR 26.31)	24
Section 3.03 Over-Concentration (49 CFR 26.33).....	24
CHAPTER D: GOALS, GOOD FAITH EFFORTS AND COUNTING	25
Section 4.01 Contractor Records	25
Section 4.02 Non-Discrimination Assurances	25
Section 4.03 Prime Contractor’s Obligations (49 CFR 26.55).....	25
Section 4.04 Procedures for Certification	28
Section 4.05 Department Contracts Assignments	29
Section 4.06 Substitutions of DBE Commitment	29
Section 4.07 Prompt Payment Mechanisms (49 CFR Part 26.29).....	30
Section 4.08 Tracking of Contract Awards and DBE Payments	31
Section 4.09 Method by which DBE Participation is Counted Towards Goal	32
CHAPTER E: DBE GOAL SETTING METHODOLOGY	36
Section 5.01 Overall Goal (49 CFR 26.45)	36

Section 5.02	Determination of “Ready, Willing and Able”	38
Section 5.03	Determining the Race & Gender Neutral and Race & Gender Conscious Portion of the Goal (49 CFR 26.51 & 26.43).....	39
Section 5.04	Calculation of the DBE Capacity Benchmark.....	40
Section 5.05	Contract Goals (49 CFR 26.51).....	42
Section 5.06	Means GDOT Will use to Meet the DBE Overall Goal.....	43
Section 5.07	Good Faith Efforts (49 CFR 26.53).....	44
Section 5.08	Termination of DBE Contractor.....	46
CHAPTER F: UNIFIED CERTIFICATION PROGRAM.....		47
Section 6.01	General.....	47
Section 6.02	Certification Requirements.....	48
CERTIFICATION STANDARDS.....		48
Burdens of Proof (49 CFR 26.61).....		48
Business Size Determinations (49 CFR Ref. 26.65).....		49
Determination of Social and Economic Disadvantaged (49 CFR 26.67).....		49
Individual Determinations of Social and Economic Disadvantaged.....		50
1. Determinations of Ownership (49 CFR 26.69)		50
2. Determinations Concerning Control (49 CFR 26.71).....		53
3. On Site Reviews.....		57
CHAPTER G: Certification Procedures.....		58
SECTION 7.01	CERTIFICATION PROCEDURES (49 CFR 26.81)	58
SECTION 7.02	REMOVAL OF DBE ELIGIBILITY (49 CFR 26.87).....	60
SECTION 7.03	THIRD PARTY CHALLENGES	61
SECTION 7.04	RECIPROCITY – STANDARDS AND PROCEDURES.....	61
CHAPTER H: RE-CERTIFICATION PROCEDURES.....		62
SECTION 8.01	PURPOSES (49 CFR 26.83).....	62
SECTION 8.02	RESPONSIBILITIES.....	62
SECTION 8.03	AFFIDAVITS OF NO CHANGE (AONC) PROCEDURES	62
CHAPTER I: D.B.E. DIRECTORY		63
SECTION 9.01	PURPOSES	63
SECTION 9.02	AIRPORT CONCESSIONNAIRES.....	63
SECTION 9.03	HOME STATE ON SITE REVIEWS	63

CHAPTER J: COMPLAINT POLICY	64
SECTION 10.01 COMPLAINT POLICIES.....	64
SECTION 10.02 PROCEDURES	65
CHAPTER K: COMPLIANCE AND ENFORCEMENT.....	67
Section 11.01 Compliance with Title VI of the Civil Rights Act of 1964 for Federal-Aid Contracts	67
Section 11.02 Enforcement Actions under the DBE Program	68
CHAPTER L: CONFIDENTIALITY, INTIMIDATION & RETALIATIONS.....	69
Section 12.01 Rules Governing Information, Confidentiality, Cooperation, intimidation and Retaliation.	69
CHAPTER M: APPENDIX SECTION	71
Attachment 1	71
Georgia DBE UCP Program Application.....	71
Personal Financial Statement	71
DBE Uniform Certification Supporting Checklist.....	71
No Change Affidavit	71
Attachment 2	71
D.B.E. Directory (Sample only).....	71
Attachment 3	71
Flow Chart of DBE Certification Process	71
Organization Charts (Revised Effective June, 2009)	71
Attachment 4	71
Federal Regulations with Appendixes – 49 CFR Part 26	71
Attachment 5	71
DBE Goal Setting Methodology.....	71
• Pages 1-5.....	71
• Pages 6-10.....	71
• Pages 11-15.....	71
• Pages 16-20.....	71
• Pages 21-27	71
Attachment 6	71
Historically Black Colleges.....	71
Attachment 7	72

Sample of Bidder’s List.....	72
• Sample A	72
• Sample B	72
Attachment 8	72
GDOT’s Criteria for Eligibility	72
Attachment 9	72
Title VI Program & Related Statutes – 23 CFR 200.9	72
Attachment 10	72
GDOT Policy – DBE Goals Committee Guidelines	72
Attachment 11	72
GDOT Disadvantaged Business Enterprise Criteria for Acceptability	72
Attachment 12	72
Commercially Useful Function Form (CUF)	72
Attachment 13	72
Prompt Payment Provision	72
Attachment 14	72
GDOT Appeal Hearing Policy Statement.....	72

Disadvantaged Business Enterprise Plan

POLICY STATEMENT (49 CFR Part 26.3)

The Georgia Department of Transportation has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR) Part 26. The Department has received federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Georgia Department of Transportation (GDOT) to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT assisted contracts.

The Policy objectives of this Program are:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contract;
6. To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and,
7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

The Georgia Department of Transportation shall not discriminate on the basis of race, color, sex or national origin in the award, administration and performance of any Georgia Department of Transportation assisted contract or in the administration of its Disadvantaged Business Enterprise Program. The Georgia Department of Transportation shall take all necessary and reasonable steps to ensure nondiscrimination.

Commissioner

Date: _____

CHAPTER A – GENERAL

Section 1.01 Objectives (49 CFR Part 26.1)

GDOT Disadvantaged Business Enterprise (DBE) Program Objectives:

Georgia Department of Transportation's DBE program reflects a determination that there is a strong basis in evidence linking it to disparities between the proportions of DBE's hired for projects or contracts and the proportion of DBE's ready, willing and able to do the work.

The Policy objectives of this Program are:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that GDOT's DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contract;
6. To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and,
7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Section 1.02 Federal Funding Regulations & GDOT Applicability (49 CFR 26.3)

This DBE Plan applies to a recipient of any of the following types of funds:

- (a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107, and Federal Transit Authority grants.
- (b) Except as provided herein, the provisions of this Plan shall apply to all federally-funded procurement and contracting, including construction and the acquisition of all commodities, equipment, goods, and services (including professional services), however, titled and irrespective of the modality or manner procured, and irrespective of whether purchased or leased.
- (c) The following categories are initially established by the Equal Opportunity Division to identify the nature and types of federal contracting which are encompassed under this plan. From time to time, and upon recommendation of the Equal Opportunity Director and Commissioner of Transportation, these categories may be amended:
 - (1) Category A - Construction: including, for example, and without limitation, any and all contracting related to road, bridges, buildings, facilities and other erected structures on real estate in the State of Georgia such as new construction, rehabilitation, remodeling, and repairs.
 - (2) Category B - Commodities: including, for example, and without limitation, the purchase of all goods, equipment, food stuffs, office, supplies, arts, furniture, books, other materials for education, libraries, and other tangible personal property not associated with, and subsumed under the provision of a service identified in Categories A, C, and D.
 - (3) Category C - Services: including, for example, and without limitation, the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfilm, courier, storage, travel, consulting, and any other non-professional services.
 - (4) Category D - Professional Services: including, for example, and without limitation, the purchase of any and all services which applicable selection criteria may require a bidder/offeror to possess a license or other certificate of competency such as accounting, auditing, engineering and architectural services.

Section 1.03 GDOT's Assurances (49 CFR 26.7)

GDOT, as the recipient, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. GDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of federally-assisted contracts. GDOT's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. GDOT has programs and policies in place to ensure compliance with Title VI of the 1964 civil Rights Act and Code of the Federal Register 49 part 26 as outlined in this Program. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to GDOT of its failure to carry out its approved program, the United States Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*) Sanctions may include, but not limited to termination of contract, debarment, removal from bid list as deemed appropriate by the Department. Procedures shall be followed as outlined in the Good Faith Efforts evaluation determination.

Section 1.04 Definitions and Terms (49 CFR 26.5)

The Georgia Department of Transportation adopts the definitions referenced in 49 CFR Part 26.5 for this program.

1. **Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

2. **Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

3. **Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

4. **Compliance** means that a recipient has correctly implemented the requirements of this part.

5. **Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

6. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

7. **Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

8. **Disadvantaged business enterprise** or *DBE* means a for-profit small business concern—

(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

9. **DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

10. **DOT/SBA Memorandum of Understanding** or *MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

11. **GDOT** means Georgia Department of Transportation.

12. **Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

13. **Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

14. **Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

15. **Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

16. **Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

17. **Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

18. **Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

19. **Operating Administration** or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

20. **Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

21. **Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553–6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

22. **Primary recipient** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

23. **Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

24. **Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

25. **Race-conscious** measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

26. **Race-neutral** measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

27. **Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

28. **Secretary** means the Secretary of Transportation or his/her designee.

29. **Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

30. **Small Business Administration** or *SBA* means United States Small Business Administration.
31. **SBA certified firm** refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.
32. **Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
33. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—
- (a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

34. **Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

CHAPTER B – RESPONSIBILITIES FOR DBE PROGRAM FOR FEDERALLY ASSISTED CONTRACTING FUNCTIONS

Section 2.01 Responsibilities & Implementation of DBE Program

- A. The Commissioner of the Georgia Department of Transportation, as the Chief Administrator of the Department, is ultimately responsible for all matters relating to civil rights.
- B. The Deputy Commissioner/Chief Operating Officer has direct authority and control over the Department's Equal Opportunity Division/Compliance Programs and provides overall guidance and policy directions in Disadvantaged Business Enterprise Program and all civil rights matters affecting the Department.
- C. The Equal Opportunity Division Director (DBE Liaison Officer) and EEO staff, under the control and authority of the Georgia Department of Transportation Commissioner, direct and supervise the operations of the Equal Opportunity Division programs functions. Staff members work in the following areas: Construction Contract Compliance, Internal Personnel Practices, Disadvantaged Business Enterprise, Civil Rights Title VI and VII, Environmental Justice, and Local Contract Compliance. In this capacity, the Equal Opportunity Division Director has direct, independent access to the Commissioner concerning DBE program matters.
- D. The Construction Division and the EEO Division are responsible for the enforcement of the DBE regulations and policies on Department of Transportation construction programs.
- E. Georgia Department of Transportation Equal Opportunity Division is the lead agency responsible for State of Georgia DBE Unified Certification Program (UCP), which includes the application, certification, decertification, and recertification, on-sites, appeals and directory.
- F. Complaints naming GDOT as the Respondent shall be forwarded to the Federal Highway Administration (FHWA Headquarters Office) for review and investigation immediately upon receipt with a copy to the to the Georgia Division FHWA Office.

Section 2.02 Responsibilities of the DBE Liaison Officer (49 CFR 26.25)

A. GDOT has designated the following individual as the DBE Liaison Officer:

Mr. Michael G. Cooper, Division Director
Office of Equal Employment Opportunity
600 West Peachtree Street, 7th Floor
One Georgia Center (OGC)
Atlanta, Georgia 30308
Telephone: (404) 631-1972,
Fax Number: (404) 631-1943
Email: mcooper@dot.ga.gov

B. As DBE Liaison Officer, Michael G. Cooper, is responsible for developing, implementing and monitoring all aspects of the DBE program, with the appropriate officials, and ensuring that the GDOT complies with all the provisions of 49 CFR Part 26.

Specific duties of the DBE Liaison Officer (Equal Opportunity Division Director) and his staff include the following:

- (1) Review all applications and certify only those firms that qualify as Disadvantaged Business Enterprises.
- (2) Notify the District EEO representative, in writing, of the results of the on-site review; (advise the District EEO representative if the applicant is approved or denied).
- (3) Review certified companies and either recertify or decertify according to their compliance with Department policies.
- (4) Maintain documentation of all complaints received from DBE's, non-DBE's, contractors, superintendents, and Department personnel. Maintain consistent documentation of complaint and any action taken.
- (5) GDOT maintains and makes available to interested persons the Uniform Certification Program (UCP) directory in print form and/or on-line directory identifying all firms eligible to participate as DBE firms in GDOT's program. The listing for each firm includes the firm's name, address, phone number, contact person, type of work the firm is certified to perform as a DBE and date of certification.
- (6) The current list of certified DBEs firm is available on line at http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/rptDBE_Directory_CA_New.pdf. Sample pages of the GDOT UCP directory may be found in Appendix Section, Attachment Two.

- (7) Meets monthly with the DBE Goal Setting Committee to discuss and finalize setting Contract DBE goals.
- (8) Assist the Office of Contract Administration in the approval of Contractor DBE Plans before the Award of the Contract.
- (9) Provide ad hoc reports from Biz Track for Department personnel, as requested.
- (10) Perform site inspections and labor interviews throughout the State.
- (11) Submit Semi-annual reports to FHWA of work designated for DBE firms on construction and consultant engineering contracts.
- (12) Provide training and information to district field construction personnel. Maintain a close liaison with district field construction personnel and assist them in carrying out their responsibilities with respect to the Department's DBE Program.
- (13) Ensure that GDOT personnel responsible for contract compliance enforce the DBE Program Plan in accordance with the contract specification.
- (14) Provide training to district field construction personnel about the DBE Program and training on completing the Commercially Useful Function (CUF) forms. A Sample CUF Form attached in Appendix Section, Attachment Twelve.
- (15) Approve or deny shortfall for DBE Participation and waivers of DBE commitments.
- (16) Work with GDOT department, FHWA and FTA to set overall annual goals.

Section 2.03 RESPONSIBILITIES & FUNCTIONS:

Duties of the Office of Construction Bidding Administration, Office of Construction, District Contracts Administration, and District Offices (49 CFR 26.37)

The responsibility and function of GDOT's Office of Construction Bidding Administration, Office of Construction, Contracts Administration, and Districts are as follows:

A. Office of Construction Bidding Administration

- (1) Make recommendation to the DBE Committee of the goals to be included in the bid proposal.
- (2) Maintains a list of DBE firms to be used on project from the Prime Contractors.

B. Office of Construction

- (1) Review Contract requirements for DBE goals. Each federal aid contract contains a DBE Criteria for Acceptability. (The substitution clause found in Section 4.06 and in the Criteria for Acceptability located in the Appendix Section, Attachment 8.)
- (2) Monitor use of DBE firms on project during construction inspections.
- (3) The Department shall approve all substitutions of Subcontractors in order to ensure the substitute firms are eligible DBEs.

C. District Offices

- (1) Primarily responsible for the administration of the DBE program for projects under construction within the District.
- (2) Set up appropriate procedures acting directly or through the Area Engineer to ensure that the Contractor meets DBE requirements in each Contract. District EEO representative or District Contract Manager shall obtain a list of approved DBE firms on each project and transmit information to the Area Engineer.
- (3) Monitor DBEs approved to perform Work on the project in the Contract and on the Awards List distributed by the Office of Contract Administration. Verify that DBE firms working are approved to work on the project and that DOT Form 485 (Request for Approval of Subcontract) has been submitted by the Prime Contractor and approved by the Department.
- (4) Ensure that the DBE Participation Reports are submitted quarterly by the Prime Contractor showing all DBE information.

- (5) District EEO Representative shall review all Quarterly DBE Participation Reports to ensure the prime contractor is in accordance with DBE plan. Any deviations shall be investigated and recorded.
- (6) Ensure the DBE firm performs work or supplies the materials approval according to the contractors DBE utilization report.
- (7) Obtain written certified verification of the dollar volume of work performed and paid for from the Prime Contractor for each DBE subcontractor before submitting the Final Pay Statement.
- (8) District EEO Representative shall discuss DBE requirements at Pre-construction Conferences and inform the Contractor that the approved DBE firms are required to perform the work designated in the Contract prior to contract execution.
- (9) Ensure the Contractor meets the DBE goal established and accepted for that project. Throughout the life of the project, Project Managers in the Districts take appropriate action as the project progresses to ensure meeting the DBE goals. All DBE shortfalls shall be reported to the DBE Liaison or designee for handling.

D. District Contracts Administration

- (1) Monitor use of DBE firms on projects during review of project records and notify Project Engineer of violations. Report any such violation to the District EEO representative.
- (2) Monitor the Quarterly DBE reports for discrepancies and upon completion; distribute them to the proper personnel.
- (3) Correspond with the Area field personnel and Contractor to get the discrepancies of the Quarterly DBE report corrected.
- (4) Compile the information and communicate it with the District EEO Office to approve additional DBE for contracts when the contractor requests them.
- (5) Compile and submit information to the District EEO office when the contractor is trying to release or replace DBE subcontractors.
- (6) Compile the Commercially Useful Function (CUFF) and submit to District EEO.

E. Area/Project Engineer Office

- (1) Maintain an accurate list of DBE firms approved for each project and ensure that sufficient Work is sufficient to meet the Contract goal as shown in the Contract or as modified by the contract modifications. Notify the District EEO representative if a shortfall is anticipated.
- (2) Review DBE subcontracts and supply agreements for compliance with the Contract. Require the DBE firm to perform work or supply materials according to the approved list.
- (3) Refer questionable discriminatory situations (i.e., Civil Rights, Equal Employment Opportunity on DBEs) that require investigation to the District EEO representative and DBE Liaison.
- (4) Require Prime Contractor to submit the Quarterly DBE Participation Report listing approved firms and dollar value of DBE agreements for Subcontracts and work performed. The Prime Contractor updates this report whenever conditions concerning DBE participation change or on a quarterly basis. Promptly transmit copies of this report to the District EEO Representative, District Office of Contract Administration and the DBE Coordinator in the Equal Opportunity Division Office.
- (5) Compare the information in this report to the original DBEs listed in the Contract. Report and record any changes to the District Office of Contract Administration and the District EEO Representative.
- (6) Failure to submit the DBE Participation Report within 30 calendar days following the end of the quarter may cause payment to the contractor to be delayed or withheld.
- (7) The Project Engineer may request a hauling plan when a DBE firm is listed for hauling credit. The Project Engineer uses this plan to determine which firm is actually doing the hauling. If the DBE firm deviates from the hauling plan, the Project Engineer may request the Contractor to submit a revised hauling plan and make note of any changes. If problems persist, the Project Engineer shall notify the District EEO representative. Credit for DBE participation may be disallowed for failure to comply with the provisions of the DBE regulations included in the Contract.
- (8) Monitor and compare the payrolls of DBE firms on the project with the Prime Contractor's payroll. Separate payroll files should exist in the project records for each Subcontractor (DBE and non-DBE firm). Swapping personnel between DBE and non-DBE firms is not acceptable.
- (9) Record pertinent information concerning Subcontractors (DBE and non-DBE) in Contract Diaries. Note any DBE Subcontractors working on the project daily in records.

Section 2.04 Reconsideration Official (49 CFR 26.53(d)(2))

If GDOT determines that the apparent successful bidder has failed to meet the requirements of Good Faith Efforts, it will provide the bidder with an opportunity to request an administrative reconsideration. Any requests for Administrative Reconsideration must be received within ten (10) business days of GDOT's letter and must be sent to:

Deputy Commissioner,
Georgia Department of Transportation
600 West Peachtree Street, N.W.
One Georgia Center
Atlanta, Georgia 30308
Telephone Number: 404-656-1015

- (1) As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- (2) GDOT's decision on reconsideration will be made by an official or officials who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder will have the opportunity to meet in person with GDOT's reconsideration official(s) to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) The evidence presented during the administrative reconsideration hearing will be reviewed and the administrative officer or officers may consider newly admitted evidence when determining whether the bidder met the requirements.
- (5) The administrative officer or officers will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

CHAPTER C: Administrative Requirements

Section 3.01 DBE Financial Institutions (49 CFR 26.27)

GDOT continues to thoroughly investigate the full extent of financial institutions owned and controlled by socially and economically disadvantaged individuals in Georgia. To date, Georgia has identified eight (8) banks which are listed below. If additional banks and financial institutions owned and controlled by socially and economically disadvantaged businesses become available, GDOT will add the name to the list. GDOT also encourages DBE firms and prime contractors to use the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities where possible.

Capital City Bank and Trust Company

Contact: George G. Andrews, President & CEO
562 Lee Street Southwest
Atlanta, GA 30310
Routing and Transit (ABA) #: 061004812
Phone: 404-752-6067
Fax: 404-752-5862

Carver State Bank

Contact: Robert E. James, President
701 Martin Luther King, Jr. Boulevard, P.O. Box 2769
Savannah, GA 31402
Routing and Transit (ABA) #: 061200658
Phone #: 912-233-9971
Fax #: 912-232-8666

Citizens Trust Bank

Contact: Cynthia Day, Senior EVP & COO
75 Piedmont Avenue, Suite 1200
Atlanta, GA 30303
Routing and Transit (ABA) #: 061010220
Phone #: 404-575-8306
Fax #: 404-575-8311

Global Commerce Bank

Contact: Sylvia E. Belen, CFO & SVP
5150 Buford Highway, Suite B-130
Doraville, GA 30340
Routing and Transit (ABA) #: 061104848
Phone #: 770-457-5858
Fax #: 770-457-1410

Haven Trust Bank

Contact: Michael F. Johnston, CFO & EVP
6340 Sugarloaf Parkway, Suite 100
Duluth, GA 30097
Routing and Transit (ABA) #: 061119846
Phone #: 678-957-5506
Fax #: 678-957-5529

Quantum National Bank

Contact: Dana Litman, SVP & CFO
505 Peachtree Industrial Boulevard
Suwanee, GA 30024
Routing and Transit (ABA) #: 061104893
Phone #: 770-945-8300
Fax #: 770-945-4888

State Bank of Georgia

Contact: Kevin M. Sharpe, SVP & CFO
131 Gingercake Road
Fayetteville, GA 30214
Routing and Transit (ABA) #: 061121009
Phone #: 770-719-1200
Fax #: 770-716-0024

United Americas Bank, NA

Contact: Charles Knight, CFO
3799 Roswell Road
Atlanta, GA 30342
Routing and Transit (ABA) #: 061019742
Phone #: 404-240-0101
Fax #: 404-240-0266

Section 3.02 DBE Directory (49 CFR 26.31)

GDOT maintains the Unified Certification Program (UCP) directory identifying all firms eligible to participate as DBEs which is available upon request to all interested person. The DBE directory is updated as the changes occur.

The current DBE directory of certified DBE firms is available upon request and an online directory is available: http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/rptDBE_Directory_CA_New.pdf. Sample pages of the GDOT UCP directory may be found in Appendix Section, Attachment Two. The Unified Certification Program directory contains the firm's name, address, telephone number, fax number, vendor identification number, DBE status, the types of work the firm performs, and the date of certification.

A sample copy of GDOT's Uniform Certification Program (UCP) Directory is found in the Appendix Section, Attachment Two.

Section 3.03 Over-Concentration (49 CFR 26.33)

GDOT will continue to review DBE participation reports and statistical reports each year to determine whether there is an over concentration of DBEs.

If GDOT determines that DBE firms are over concentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, GDOT will consider appropriate measures to address over concentration and submit to Federal Highway Administration a plan on how to address over-concentration (49 CFR Part 23.33(c)).

- (a) Measures considered may include the use of incentives, technical assistance, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field.

CHAPTER D: GOALS, GOOD FAITH EFFORTS AND COUNTING

Section 4.01 Contractor Records

For every prime contractor and subcontractor bidding, quoting, or providing services on a federally-assisted contract, the prime contractor will provide the Department with the following information on each contract: Firm's Name, Address, Federal Tax Identification Number, DBE or Non-DBE Status, Subcontractor or Subconsultant status, contact person, Company's Email Address, Prime Consultant/Contractor's Name, Address/Telephone Number, Bid/Proposal Number and Quote submittal date.

This listing is intended to create a listing of all firms participating or attempting to participate, on DBE assisted contracts. The listing must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs.

Section 4.02 Non-Discrimination Assurances

Central to the GDOT's implementation of the foregoing policy are the signed "Assurances" required of each State Highway Agency in accordance with Title 49, CFR Part 26 and related statutes and regulations. Each contract GDOT signs with a prime contractor and each subcontract signed with the prime contractor must include the following Assurance:

“The Contractor, Sub-recipient, Subcontractor and Consultant must sign a statement of assurance that they shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor, subcontractor, consultant and sub-recipient shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally-assisted contracts.”

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as GDOT deems appropriate.

Section 4.03 Prime Contractor's Obligations (49 CFR 26.55)

In order to receive a highway contract funded with federal money, contractors, sub-contractor and professional service consultants must make the assurance that they will not discriminate on the basis of race, color, national origin or sex in the administration of awards, contracting and performance of the contract.

The Contractor must agree to carry out the applicable requirements of 49 CFR Part 26 in the administration of the contract. Failure by the prime contractor to assure compliance with the DBE regulations may be considered a breach of the Prime contractor agreement with GDOT.

DBE Contract requirements can be satisfied through means that allow an approved DBE firm to obtain work and payment for project related items, such as the following:

- A. The Contractor may count the entire expenditure for actual work subcontracted and performed by any approved DBE firm, including supplies purchased or equipment leased by the DBE, for the work of the contract (except supplies and equipment the DBE subcontractor purchased or leased from the prime contractor or its affiliate.)
- B. The Contractor may count the expenditure to a DBE manufacturer (i.e., a supplier that actually produces goods from raw materials or substantially alters them for resale.)
- C. The Contractor may count sixty percent (60%) of the expenditures to DBE suppliers that are not manufacturers, provided that the DBE supplier meets the following:
 - (1) Performs a Commercially Useful Function (CUF) in the supply process;
 - (2) The firm is established as a regular dealer of the material or supplies being furnished;
 - (3) The firm is engaged in selling the material or supplies to the public.

According to 49 CFR 26.55(c), a DBE is considered performing a Commercially Useful Function when *“it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved.”*

A regular dealer is defined in 49 CFR Subtitle A as: *“a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business”*. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

The Contractor may count the entire expenditure to DBE firms for fees or commissions charged by an approved DBE firm providing a bona fide service. This service includes professional, technical, consultant or managerial services and assistance in procuring essential personnel, facilities, equipment, materials or supplies required for completing the Contract. The Department determines the fee or commission to be reasonable and not excessive as compared to similar services.

The Contractor may count the entire premium for Performance and Payment Bonds and product-related insurance purchased from a DBE agency.

The Contractor may count the entire amount of expenditures to regular DBE dealers for rental of equipment. The Contractor may count the entire expenditures to DBE firms when a DBE

subcontracts part of the work of its contract to another firm, only if the firm is a DBE. The value of the subcontracted work can only be counted if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goal.

Second Tier Contracting: Trucking

DBE subcontractors may issue second tier subcontracts only to DBE contractors if the work is to be counted toward the DBE goal.

The Contractor may count expenditures to DBE firms that have contracted to furnish material for the project provided the following items listed in (a) through (f). Also, to receive credit for this, the DBE firm must perform a Commercially Useful Function.

- (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals. Any apparent preferential treatment/distribution of available work should be reported to the DBE Liaison.
- (b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (e) The DBE may also lease trucks from a non-DBE and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since their services are not provided by a DBE.
- (f) A lease must indicate that the DBE has priority use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
- (g) Leased trucks must display the name and identification number of the DBE Subcontractor on the outside of the truck.

DBE credit for furnishing, hauling and placing GAB (actual product) may only be allowed if the DBE purchases the stone, hauls the stone, and places the stone using a spreader owned by the DBE and operated by personnel on the DBE Subcontractor's payroll.

Section 4.04 Procedures for Certification

Individuals seeking to participate in the Disadvantaged Business Enterprise Program must comply with the regulations in accordance with 49 CFR Part 26. The requirements apply to all DBE's:

A. Certification

Individuals seeking to participate in the DBE Program must become certified. The certification process requires that applicants provide information concerning social and economic status, gender, ownership, independence and control of their firms. Applications for DBE certification can be obtained through the Equal Opportunity Division and the GDOT website located at www.dot.state.ga.us or <http://wwwb.dot.state.ga.us/dot/eeo-div/dbeapp.shtml>. No certification will be approved until all the paperwork has been submitted and reviewed.

A sample UCP Application and Personal Financial Statement is found in the Appendix Section, Attachment One.

B. Renewal of Certification

DBE certifications are valid for a period of three (3) years. During the time of certification, the DBE is obligated to notify the Equal Opportunity Office of any and all changes in the ownership or financial position of the firm that would impact its eligibility under the regulations. The DBE firm is required to submit an annually a No Change Affidavit. It is the responsibility of the DBE to keep their certification current.

C. Pre-Qualification & Registration

All firms seeking to work on contracts with the Georgia Department of Transportation must obtain a Certificate of Eligibility from the Office of Prequalification.

The GDOT Board approved rule changes in the Prequalification of Primes and Registration of Subcontractors. Provision changes were made to sections §672-5-.04 and §672.5-.11 of the State Transportation Board Rules and Regulations Governing the Prequalification of Prospective Bidders. The rule changes also require all contractors to indicate to the Department the specific classes of work and the location(s) in which the contractor desires to perform work. All prime contractors, subcontractors, certified DBEs and non-DBE firms must be registered with the Department.

D. Lease of Equipment

If a DBE leases equipment from another contractor, the lease agreement must be in writing.

Section 4.05 Department Contracts Assignments

DBE firms should be afforded every opportunity to perform designated work on department contracts without disruption. The Prime Contractor may perform or change work assigned a DBE Subcontractor in order to prevent delays in completing the project, with the approval of GDOT. No DBE credit is allowed for work unless it is performed by an approved DBE. However, these instructions do not apply if the Prime Contractor is a DBE firm, and the firm may subcontract work, subject to meeting the contract requirements.

The Department will not tolerate fronts, shams, or pass-through. The Area Engineers, Project Engineers and Inspectors ensure that the DBE Program is properly administered. When a violation of DBE participation occurs, the DBE Liaison takes appropriate action (against the Prime Contractor and any involved Subcontractors, as well as the DBE). The Area Engineer reports any situation that may require investigation to the District EEO representative.

Section 4.06 Substitutions of DBE Commitment

A. DBE Substitutions

If the Contractor wishes to substitute one DBE for another, the District Engineer may approve the request and send a copy to the Office of Construction Bidding Administration and the District EEO Office. A simple letter from the Prime Contractor stating they could not get the DBE to perform will not be accepted as documented evidence of Good Faith Efforts. Substitutions of DBEs will only be allowed if acceptable documentation is provided. The Contractor's request for substitution must have supporting documentation with the reasons for the substitution, including a release from the original DBE stating there is no objection to the substitution.

Documentation can be in the following forms:

1. Release signed by the designated DBE.
2. Written efforts on behalf of the Prime or Subcontractor, if the DBE is a 2nd tier Subcontractor.
3. Phone logs and/or registered letters supporting efforts to get the DBE on the Project to perform work.

B. Shortfalls and Good Faith Efforts

The Equal Opportunity Division (EOD) will have the final determination on shortfalls and good faith efforts. If a shortfall occurs on a project, the Contractor shall submit a letter to the Project Engineer giving the reasons why the shortfall occurred and their attempts to fulfill the goal providing documentation that they have made a Good Faith Effort. The Project Engineer shall review the letter and forward to the District with information as to why the shortfall should or should not be accepted.

The District Construction Engineer shall then review and make any additional comments before forwarding by letter to the Office of EEO for their final ruling. The Equal Opportunity Division will review and make a determination; the Office of EEO will then send the Contractor a final determination with copies to the District Office and the Office of Contract Administration. Copies of all correspondence shall be sent to the Office of Contract Administration. Every attempt should be made to achieve the DBE goal on projects as stated in the contract before any ruling will be made.

Section 4.07 Prompt Payment Mechanisms (49 CFR Part 26.29)

Prime contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than fifteen (15) calendar days from receipt of each payment made to them.

DBE firms notify the Equal Opportunity Division Office and District Offices will investigate and act on complaints regarding lack of prompt payments. The Office of Construction Bidding Administration will be contacted to verify if the particular line items in questions have been paid.

A letter will be written to the prime contractor to notify prime that the matter of lack of prompt payment is being reviewed. The Prime shall respond to GDOT's written request concerning prompt payment within a designated time period.

The DBE will be notified of the results of the investigations of prompt payment.

- (a) Failure to comply with the terms and conditions of this provision shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. The prime contractor would be responsible for any corrective work shown at the time of final inspection. If the contractor fails to take corrective action, GDOT reserves the right to terminate the contract.
- (b) Any delay or postponement of payment among the parties may take place only for good cause, with prior written approval from GDOT Equal Opportunity Division.
- (c) All subcontract agreements between the prime contractor and subcontractor shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.
- (d) Retainage: Special Notice to Contractors - The Department no longer withholds retainage on payments for contracts. Therefore, as a result of this, *contractors shall not be allowed to withhold retainage from subcontractors.*

A copy of the Prompt Payment Provisions is found in the Appendix Section, Attachment 13.

Section 4.08 Tracking of Contract Awards and DBE Payments

The GDOT tracking system (BizWeb@) is a secured external web application that allows contractor, consultants and local government sub-recipients to log in and submit data electronically to GDOT internal BizTrak@ data base.

The DBE tracking system allows approved Contractors and vendors working on federally funded GDOT contracts to submit data to GDOT that include DBE sub-contractors, payments to primes, payments to sub-contractors, company-wide and project specific EEO reports, on the job training hours and various notes to file. The awards of contracts containing DBE project goals, commitments to provide work and payments made to DBEs can be progressively monitored to confirm that work has been performed and a Commercially Useful Functions has been provided. All Prime contractors and all DBE subcontractors must submit proof of payment to GDOT. This information is entered into the DBE Tracking System by the Consultant Services, Contract Administration, Planning and Districts Offices. The Equal Opportunity Division downloads the information into a single report. The DBE Tracking and reporting system has all of the required DOT, FHWA and USDOT reporting formats incorporated into the software. The software is designed to keep a running tally of all actual awards and payments.

This bidder's data is collected and maintained in the Office of Construction Bidding Administration (Construction Division). Interested Bidders, Subcontractors and Manufacturers submit the "Request for Listing on Bidders/Subcontractor/Manufacturer List" form to the Office of Contracts Administration.

Section 4.09 Method by which DBE Participation is Counted Towards Goal

GDOT will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Note: 49 CFR Part 26 as amended on July 16, 2003 (published 6-16-03) allows recipients (such as GDOT) to count for DBE credit the dollar volume attributable to no more than twice the number of trucks on a contract owned by a DBE firm or leased from another DBE firm, but (the recipient) is not required to do so. The final rule permits, but does not require, recipients to count credit in this manner. That is, in accordance with the 2003 amendment, GDOT has chosen to continue the counting provisions its DBE program has adapted to comply with the 1999 final rule change as found in this program plan. In the future, if GDOT chooses to modify its counting provisions to count the additional credit for non-DBE leases permitted by the 2003 amendment, it must do so via a change to its DBE program approved by the FHWA.

Participation will be counted toward fulfillment of the DBE goal as follows:

- (A) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (A) (2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided it is determined that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm *does not* count toward DBE goals.
- (B) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (C) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that it is not performing a commercially useful function.
4. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (C) (3) of this section, the DBE may present evidence to rebut this presumption.
5. The Departments decisions on commercially useful function matters are subject to review by the US DOT, but are not administratively appealable to the US DOT.

(D) The following factors are to be used in determining whether a DBE trucking company is performing a commercially useful function:

- (1) The DBE must be responsible for the management and Supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE must itself *own and operate* at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provided on the contract.

(5) The DBE may also lease trucks from a non-DBE and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) For purposes of this paragraph (D), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(E) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) If the materials or supplies are obtained from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (E) (2) (b) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (E) (2).

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job sit, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (4) Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.
- (5) No participation will be counted that is not in compliance with Special Provision entitled "Criteria for Acceptability" which is a part of GDOT's contract or with any provisions included in 49 CFR Part 26.
- (6) If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. If the contract amount under-runs, the contractor will not be allowed to under-run the dollar amount of DBE participation except when the DBE subcontracted items themselves under-run.

A copy of the Criteria for Acceptability is found in the Appendix Section, Attachment 8.

CHAPTER E: DBE GOAL SETTING METHODOLOGY

Section 5.01 Overall Goal (49 CFR 26.45)

GDOT will annually establish overall goals in accordance with 49 CFR Part 26.45 and will submit the overall goal to FHWA on August 1st of each year. GDOT's methodology follows the two-step process outlined in Part 26.45. The first step is to determine the relative availability of ready, willing and able DBEs in the market area, which is the 'base figure'. The second step is to adjust the 'base figure' percentage from Step 1 so that it reflects as accurately as possible the DBE participation we would expect in the absence of discrimination based on past participation, the disparity study, and/or information about barriers to entry to past competitiveness on DBEs projects.

In establishing the overall goal each year, GDOT will consult with minority, women, and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and GDOT's efforts to establish a level playing field for the participation of DBEs.

GDOT's overall goal is based on evidence of the availability of ready, willing and able DBEs relative to all businesses that are ready, willing and able to participate on GDOT's federally-assisted contracts. The goal method reflects GDOT's determination of the level of DBE participation it would expect absent the effects of discrimination.

GDOT publishes a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Equal Opportunity Division Office for thirty days following the date of the notice, and informing the public that GDOT will accept comments on the goals for forty-five days from the date of the notice. A notice will be issued in general circulation media and available minority focused media. Normally, notices will be issued by June 15th of each year. The notice will include addresses to which comments may be sent and addressees where the proposal may be reviewed.

GDOT will begin the overall goal on October 1st of each year to provide time for document and language corrections.

Additionally, other sources of information are as follows:

- (a) The use of disparity studies commissioned and approved by the GDOT Transportation Board, updated bids, awards, and DBE participation data.
- (b) A review of all firms that are pre-qualified prime contractors, pre-qualified-subcontractors, and pre-qualified professional consultants.
- (c) A review of all non-pre-qualified firms that received awards for the calendar years.
- (d) A review of the dollar values of all prime contracts, subcontracts and professional consultant contracts awarded for the calendar year.

- (e) A determination of the market area for GDOT contracting.
- (f) Included in this methodology are the general recommendations on goal development from the DBE Rule 49 CFR Part 26.45, and U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization (see 49 CFR Part 26 in the Appendix Section).

Section 5.02 Determination of “Ready, Willing and Able”

GDOT’s annual goal is presented to the Transportation Board at a formal announced meeting of the public for information. In addition to several advertisements, and other outreach efforts, public hearings are held to hear testimony from contractors, organizations and citizens regarding the annual goal.

In accordance with 49 CFR Part 26, GDOT collects and tabulates the bidders’ data which included both successful and unsuccessful bidders. This bidder’s data is maintained in the Office of Construction Bidding Administration (Construction Division). This information is utilized on an annual basis for DBE goal calculations on availability. GDOT reviews, considers, and analyzes the annual gross receipts of the DBE’s.

This goal methodology defines *available firms* as firms that have been pre-qualified by GDOT with respect to their capacity to do work and that reside within the State of Georgia. The DBE availability is determined by the percentage of certified DBE firms as well as pre-qualified as prime contractors, subcontractors, and professional consultants that are located in Georgia.

Before establishing the overall goal each year, GDOT prepares statistical reports and collects relevant data. GDOT reviews several major data sources to determine ready, willing, and able firms, they are as follows:

- (1) Consultant Prequalification Database;
- (2) Contractor Registration/Prequalification Database;
- (3) Qualified Products List;
- (4) Certified DBE list of firms who do business within the NAICS codes utilized by GDOT;
- (5) Subcontractors from the Bidder’s list;
- (6) Firms that have registered with GDOT, but who have not been prequalified.

GDOT reviewed the availability of DBEs that were on the bidders list, DBE directory and market statistics data. In addition to GDOT listing there was an increased effort to register and certify DBEs from other state organizations, Governors Small Business Center, Minority and Women Business Organizations.

All pre-qualified firm contracts that GDOT awarded are included in the data base calculations. For a non-pre-qualified firm to be included in the pool of available firms, it must have received a contract from GDOT. The non pre-qualified contracts are less than \$500,000.

The goal is adjusted for past DBE participation in all areas after controlling for capacity, (i.e. adjusted for characteristics that effect their overall contract impact which includes GDOT assigned pre-qualified capacity, ability factor score, age, product, location service area and DBE status). This information is completed in the prequalified contractors and registered subcontractors list.

A detailed description of GDOT’s methodology for establishing its overall goal for the latest fiscal financial year (FFY) is shown in the Appendix Section, Attachment 5.

Section 5.03 Determining the Race & Gender Neutral and Race & Gender Conscious Portion of the Goal (49 CFR 26.51 & 26.43)

The logic and plan behind the race and gender neutral benchmark is to remove the specific GDOT DBE goal portion of overall DBE availability and utilization that is achieved in areas where there are no statistically significant disparities. The resulting percent is then a race and gender neutral benchmark. GDOT must determine the dollar value of awards that DBEs would receive in contracting areas that do not have statistically disparities that would derived them from the race and gender neutral benchmark.

This amount is then expressed as a proportion of all awards that DBEs might be expected to receive based on their characteristics. This capacity percentage is then expressed as a percentage of the DBE goal.

To determine the portion of the goal that is race and gender neutral, we examined the amount of utilization that was achieved by DBE's on all prime contracts. During the solicitation / bidding process, GDOT prime contractor selects whether their decision to hire a DBE subcontractor was made based on a race-conscious and race neutral determination.

Finally, GDOT considers the data submitted by the Contractor's records for the previous twelve (12) months. The Contractor's data included both the race/gender neutral and race/gender conscious percentages.

- (a) GDOT will not use set-asides, quotas or preferences for DBEs on federally-assisted contracts subject to this part.
- (b) GDOT currently uses both race conscious methods and race neutral methods to achieve the established goals.

Section 5.04 Calculation of the DBE Capacity Benchmark

The calculation of DBE capacity is designed to determine the total volume of contracting that DBEs are capable of engaging in on an annual basis. The information stated below explains in detail how these calculations are estimated by GDOT.

The total value of contractual services that are procured by GDOT divided by the amount to prime construction contractors. To obtain the proportion of available firms that are DBEs, GDOT takes the availability measure derived from two sources:

- (1) All firms that are pre-qualified as prime contractors, professional consultants or subcontractors; and
- (2) All firms that received prime contracts, subcontracts or professional consultant awards.

The capacity measure gives the proportion of the total value of GDOT contracting that DBEs are capable of performing. The capacity percentages are derived by the value of awards received by prime contractors on the firm characteristics of those prime contractors. These characteristics include their GDOT assigned pre-qualified capacity, ability factor score, age, product and service area and DBE status. The value of awards that firms could be expected to receive given their characteristics.

Once GDOT derives the amount that DBEs could be expected to receive given their characteristics, this amount is a percent of the value of awards all firms might be expected to receive. The same procedure is then followed for subcontractors and professional consultants.

The next step is to derive one overall goal from the three capacity figures. To derive one overall capacity benchmark it is assumed that the contribution to this benchmark from DBEs in each of the three areas should be adjusted to reflect the relative amount of total contracting taking place in the area. To do this GDOT weights the DBE capacity percentages. Then simply multiply the weights, by the capacity percentages. This weighted capacity gives the total percent of DBE utilization in prime contracting, subcontracting and professional consulting should comprise of all GDOT contracting.

GDOT Procedures provides for determining the DBE baseline availability by weighting the availability by work code description, which in some cases is made up of Quality Products List (QPL), totaling those weighted percentages, and arriving at a weighted baseline goal.

The procedure as suggested is an appropriate way to arrive at a weighted baseline availability provided that all the availability sources had QPL codes assigned to them so that they could be categorized in like work codes. GDOT data did not have broken down into QPL work codes because data does not exist for these newly implemented work codes and NAICS comparison. GDOT will continue to refine the data between the work codes and NAICS codes. Also not all the sources for availability have the same work code types (QPL, NAICS, and some have no work codes) so weighting could not be achieved in arriving at the Baseline Availability

While it is preferable to calculate weighted baseline availability whenever possible, GDOT found the limitations of the data; therefore it was appropriate to arrive at an un-weighted goal. GDOT arrived at the baseline goal by counting all DBE's in the source databases and compared them to all firms.

A detailed description of GDOT's methodology for establishing its overall goal for the latest fiscal financial year (FFY) is shown in the Appendix Section, Attachment 5.

Section 5.05 Contract Goals (49 CFR 26.51)

The following provisions apply to the use of contract goals:

1. GDOT will use contract goals on those federally-assisted contracts that have subcontracting possibilities.
2. GDOT will not set a contract goal on every federally-assisted contract. GDOT will not set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by GDOT's overall goal, the contract goals will be set so that the cumulative result meets the overall goal that cannot be met through the use of race-neutral means.
3. To ensure that GDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, GDOT will adjust its use of contract goals as deemed necessary. If, during the course of any year in which GDOT is using contract goals, it is determined that the overall goal will be exceeded, GDOT will rely on the use of contract race neutral goals to the extent necessary to ensure compliance with 49 CFR Part 26.
4. If GDOT determines that it will fall short or exceed its overall goal using race neutral and/or race conscious means, then GDOT will make appropriate modifications in its use of its race-conscious and/or race neutral contract goal measures to meet the overall goal.
5. If the DBE participation GDOT goals are exceeds for two consecutive years, GDOT will make adjustments using race-neutral contract goals to met overall goals in the following year.
6. If GDOT obtains DBE participation that exceeds its overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), it will reduce its use of contract goals proportionately in the following year.

In any year in which GDOT projects meeting part of its goal through race-neutral means and the remainder through contract goals, GDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. GDOT will report this data to the concerned operating administration. The DBE Goal Setting Committee meets monthly to discuss and finalize setting Contract DBE goals in accordance with the appropriate regulations and Department policies.

Section 5.06 Means GDOT Will use to Meet the DBE Overall Goal

GDOT will meet a portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any portion of contract work a DBE wins as prime contractor subcontract through customary competitive procurement procedures and/or is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award. Contractor written notification to GDOT is recorded and is made part of the record. GDOT will use the following methods to meet the DBE goal:

- Broader Advertisement Circulation
- Outreach

Race-neutral means, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBEs, and other small businesses;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing, by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities by ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders/offerors; ensuring the dissemination to bidders/offerors on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate;
5. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

Section 5.07 Good Faith Efforts (49 CFR 26.53)

GDOT's determination that a bidder/offeror has exercised good faith efforts in attempting to meet the DBE contract goal are done in accordance with 49 CFR Parts 26, Appendix A.

- (a) GDOT will take into consideration a bidders, offerors, and consultant's (hereinafter referred to as "bidder") good faith efforts when determining whether the bidder has attempted to meet the DBE contract goal. A determination of good faith efforts includes the following things:
 - (1) Documents that it has obtained enough DBE participation to meet the goal; or
 - (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder does document adequate good faith efforts, GDOT will not deny award of the contract on the basis that the bidder failed to meet the goal.

- (b) In its solicitations for federally-assisted contracts for which a contract goal has been established, GDOT will require the following:
 - (1) Award of the contract will be conditioned on meeting the requirements of this section;
 - (2) All bidders will be required to submit the following information to GDOT, at the time provided in paragraph (b)(3) of this section:
 - i. The names and addresses of DBE firms that will participate in the contract;
 - ii. A description of the work that each DBE will perform;
 - iii. The dollar amount of the participation of each DBE firm participating;
 - iv. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - v. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
 - vi. If the contract goal is not met, evidence of good faith efforts must be submitted in accordance with the contract specifications.

- (3) The bidder must present the information required by paragraph (b)(2) of this section by the close of business on the third working day following opening of the bid as a matter of bidder responsibility.
- (4) GDOT will ensure all information is complete, accurate and adequately documents the bidder's good faith efforts before committing itself to the performance of the contract by the bidder.

If GDOT determines that the apparent successful bidder has failed to meet the requirements of paragraph (a) of this section, it will, before awarding the contract, contact the bidder by certified mail and provide the bidder with an opportunity to request an administrative reconsideration. **ANY REQUESTS FOR ADMINISTRATIVE RECONSIDERATION MUST BE RECEIVED WITHIN TEN (10) BUSINESS DAYS OF GDOT'S LETTER** and must be sent to the Deputy Commissioner, One Georgia Center, 600 West Peachtree Street, N.W., Atlanta, Georgia 30308.

- (1) As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- (2) GDOT's decision on reconsideration will be made by an official or officials who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder will have the opportunity to meet in person with GDOT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) The evidence presented during the administrative reconsideration hearing will be reviewed. The GDOT official(s) may consider newly admitted evidence when determining whether the bidder met the requirements of paragraph (a).
- (5) The GDOT official(s) will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

Section 5.08 Termination of DBE Contractor

- (A) A prime contractor is prohibited from terminating for convenience a DBE subcontractor listed in response to DBE substitutions of this DBE Program Plan and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without GDOT's prior written consent.
- (B) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, a prime contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE.
- (C) These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal GDOT established for the procurement.
- (D) Failure to comply with the requirements of this section will result in administrative remedies.

CHAPTER F: UNIFIED CERTIFICATION PROGRAM

Section 6.01 General

A. Purpose

In accordance with the Federal Department of Transportation's regulation 49 CFR Part 26, CHAPTER E, GEORGIA UNIFIED CERTIFICATION PROGRAM or GUCP , which consist of the Georgia Department of Transportation and the Metropolitan Atlanta Rapid Transit Authority [MARTA], have developed a Disadvantaged Business Enterprise Certification Procedure. The purpose of this procedure is to ensure that only firms that meet the eligibility standards for certification are classified as DBE(s). In carrying out this procedure, the GUCP will review information, facts, and circumstances that lead to the discernment of whether a firm is an independent business that is owned and controlled by minorities, females and/or persons who are socially and economically disadvantaged. Several ancillary factors that will be considered in support of this process will entail whether an applicant firm simultaneously meets the small business size standard of the Federal Department of Transportation and the Small Business Administration, while carrying out a commercially useful purpose. This information in tandem with the owner's Personal Net Worth being less than \$750,000 will constitute the minimum threshold requirements that an applicant firm will have to address.

The GUCP shall not discriminate on the basis of race, color, sex or national origin in the award, administration and performance of any Georgia and MARTA assisted contract or in the administration of its Disadvantaged Business Enterprise Program. The GUCP shall take all necessary and reasonable steps to ensure nondiscrimination.

B. Statutory Authority

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.
2. Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, 49 CFR Parts 23 and 26.

Section 6.02 Certification Requirements

In order to be a Disadvantaged Business Enterprise (DBE), a firm must be a small business concern as defined by the Small Business Administration (SBA) in 13 CFR 121. The GUCP will review a firm's averaged gross receipts and personal tax returns for three years and measure it against the North American Industry Classification System (NAICS) codes under which the applicant firm operates. If the applicant firm meets these small business measures, it will then be held up against the Federal Department of Transportation's small business size standard of \$20.41 Million in averaged gross receipts over a three-year period. These measures, in tandem with a firm's declaration of social disadvantaged and proof that the owner's Personal Financial Statement is less than \$750,000, must be reflected on the GUCP's Personal Financial Statement for Disadvantaged Business Enterprise Certification, which must be completed in total, with required attachments, and notarized. A sample copy of these forms is available in the appendix section).

If any one of the above noted threshold requirements is not met or satisfied, the GUCP cannot and will not continue the review of a firm's certification application. If a firm meets all of the threshold requirements as noted, it will have to submit an Application for Disadvantaged Business Enterprise (DBE) Certification. This form must be completed in total, signed and notarized. The information on this form, and in any attachments, is vital to the GUCP's evaluation and review process because it constitutes the body of data needed as a prerequisite to conduct an on-site review.

CERTIFICATION STANDARDS

Burdens of Proof (49 CFR 26.61)

Any firm seeking DBE certification from the GUCP shall have the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 concerning group membership or individual disadvantaged, business size, ownership, and control. In this connection, the GUCP will rebuttably presume that members of the designated groups identified in 49 CFR Part 26.67 (a) is socially and economically disadvantaged. This means that they may not have the burden of proving to the GUCP that they are socially and economically disadvantaged. However, applicant firms do have the obligation to provide the GUCP with information concerning their economic disadvantaged. Individuals who are not presumed to be socially and economically disadvantaged, and individuals, concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to the GUCP, by a preponderance of the evidence, that they are socially and economically disadvantaged. The GUCP will have the sole responsibility of making any and all determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantaged by considering all the facts in the record. The facts that will be reviewed governing group membership shall include, but not be limited to, the following:

- Whether a person has held himself/herself out to be a member of a designated group over a long period of time prior to application for certification.
- Whether the person is regarded as a member of the group by the relevant community.
- Whether the applicant has the ability to produce appropriate and verifiable documentation of group membership.
- Whether the applicant has the ability to demonstrate social and economic disadvantaged on an individual basis if they are determined not to be a member of a designated *disadvantaged* group.

Business Size Determinations (49 CFR Ref. 26.65)

In determining whether a firm is an eligible DBE from the vantage point of size standard, the **GUCP** will measure a firm, including its affiliates, against the SBA *business* size standard(s) found in 13 CFR 121 appropriate to the types of work, as defined by the 2002 North American Industry Classification System (NAICS) codes, the firm seeks to perform on contracts.

Even if it meets the requirements of the SBA, **GUCP** will not consider a firm as an eligible DBE if it has had average annual gross receipts over the last three years in excess of \$20.41 million. The latter is the amount that the Secretary adjusts for inflation from time to time.

Determination of Social and Economic Disadvantaged (49 CFR 26.67)

The GUCP will rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be *disadvantaged* by the SBA, are socially and economically *disadvantaged* individuals. To validate this presumption, we will require applicants to submit a signed, notarized certification that each presumptively *disadvantaged* owner is, in fact, socially and economically *disadvantaged*. Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, will be required to submit a signed, notarized statement of Personal Financial Statement, with appropriate supporting documentation. These two points of information must be noted solely on the **GUCP's** Statement of Personal Financial Statement for Disadvantaged Business Enterprise Certification (see copy in the Appendix Section).

For those persons claiming to be an Alaskan Native, the **GUCP** anticipates that their personal net worth statements will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation:

- Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum.
- Stock (including stock issued or distributed by an ANC as a dividend or distribution on stock).
- A partnership interest and or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock);
- An interest in a settlement trust.

The GUCP will review all information submitted in this regard to determine if a rebuttal of presumption of disadvantaged is required. If an individual's personal net worth exceeds \$750,000, said individual's presumption of economic disadvantaged is automatically rebutted and their application for certification will be denied.

Should the GUCP have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically *disadvantaged*, it will follow the procedure required for removal of a DBE's eligibility mentioned later in this procedure. These basic steps will apply to all firms including those that are recognized by the SBA under the 8(a) or Small and Disadvantaged Business (SDB) program. The GUCP will not automatically grant 8(a) or SDB approved firm's automatic certification.

Individual Determinations of Social and Economic Disadvantaged

The GUCP will entertain applications for certifications from firms owned and controlled by individuals who are not presumed to be socially and economically *disadvantaged*. We will consider each said application on a case-by-case basis to determine whether each individual whose ownership and control are relied upon for DBE certification is socially and economically *disadvantaged*. In such a proceeding, the applicant firm has the burden of demonstrating to us, by a preponderance of the evidence, that the individuals who own and control it are socially and economically *disadvantaged*. An individual whose personal financial statement exceeds \$750,000, as reflected on the GUCP's Statement of Personal Net Worth form, shall not be deemed to be economically *disadvantaged*. In addition, the applicants must provide sufficient information to permit determinations of both ownership and control.

1. Determinations of Ownership (49 CFR 26.69)

In determining whether the socially and economically *disadvantaged* participants in a firm own the firm, the GUCP will consider all the facts in the record, viewed as a whole. Accordingly, our review will entail an analysis of a number of factors that have historically proven to be definitive and accurate measures of ownership matters. Since new and innovative legal forms of business are apt to be encountered, the enumeration of elements to be considered should be viewed as basic

and not necessarily all-inclusive. This leaves the **GUCP** with leeway to institute additional measures for cases that may require the acquisition of non-traditional bases of information because of unusual circumstances. The body of information that will be examined and used as a guide for evaluation purposes is as follows:

- a. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically *disadvantaged* individuals. In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. For a partnership, 51 percent of each class of partnership interest must be owned by socially and economically *disadvantaged* individuals. Such ownership must be reflected in the firm's partnership agreement. Limited liability companies must have at least 51 percent of each class of member interest owned by socially and economically *disadvantaged* individuals.
- b. A firm's ownership by socially and economically *disadvantaged* individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The *disadvantaged* owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- c. Securities that constitute ownership of a firm shall be held directly by *disadvantaged* persons. No securities or assets held in trust, or by any guardian for a minor, shall be considered as held by *disadvantaged* persons in determining the ownership of a firm.

However, securities or assets held in trust shall be regarded as held by a *disadvantaged* individual for purposes of determining ownership of the firm, if (1) The beneficial owner of securities or assets held in trust is a *disadvantaged* individual, and the trustee is the same or another such individual; or (2) The beneficial owner of a trust is a *disadvantaged* individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust will be counted only in the situation where the same *disadvantaged* individual is the sole grantor, beneficiary, and trustee.

- d. The contributions of capital or expertise by the socially and economically *disadvantaged* owners to acquire their ownership interests must be real and substantial. The **GUCP** will view insufficient contributions to include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a *disadvantaged* individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their *business* will not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- e. The **GUCP** will apply the following requirements to situations in which expertise is relied upon as part of a *disadvantaged* owner's contribution to acquire ownership: (1) The owner's expertise must be-- (i) In a specialized field; (ii) Of outstanding quality; (iii) In areas critical to the firm's operations; (iv) Indispensable to the firm's potential success; (v) Specific to the type of work the firm performs; and (vi) Documented in the records of the

firm. These records must clearly show the contribution of expertise and its value to the firm. (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

- f. The **GUCP** will deem as held by a socially and economically *disadvantaged* individual, for purposes of determining ownership, all interests in a *business* or other assets obtained by the individual-- (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or (2) Through inheritance, or otherwise because of the death of the former owner.

On the other hand, the **GUCP** will presume as not being held by a socially and economically *disadvantaged* individual, for purposes of determining ownership, all interests in a *business* or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-*disadvantaged* individual or non-DBE firm who is-- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; (ii) Involved in the same or a similar line of *business*; or (iii) Engaged in an ongoing *business* relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification. To overcome this presumption and permit the interests or assets to be counted, the *disadvantaged* individual must demonstrate to The **GUCP**, by clear and convincing evidence, that-- (i) The gift or transfer to the *disadvantaged* individual was made for reasons other than obtaining certification as a DBE; and (ii) The *disadvantaged* individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-*disadvantaged* individual who provided the gift or transfer.

- g. When marital assets (other than the assets of the *business* in question) held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, The **GUCP** will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The **GUCP** will not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically *disadvantaged* owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm will be required as an integral part of the firm's application for DBE certification.

- h. While the **GUCP** will acknowledge a socially and economically *disadvantaged* individual's acquisition of his or her ownership interest as the result of a gift or transfer without adequate consideration, it will examine said matters closely. The same will apply to those situations in which the co-signature of a spouse is not a socially and economically *disadvantaged* individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents. Continuing in this vein, particularly close and careful scrutiny will also be applied to the ownership of a firm

or its assets that are transferred for adequate consideration from a spouse who is not a socially and economically *disadvantaged* individual to a spouse who is such an individual.

2. Determinations Concerning Control (49 CFR 26.71)

In order to be an eligible DBE, a firm must be both owned and controlled by socially and economically disadvantaged individuals. This dictates that even if an individual clearly meets the standards for ownership, he/she still has to prove that they also control their firm. Since ownership and control issues are often intertwined, The **GUCP** will use the same scrutiny oriented approach used for examining ownership as it reviews control issues. The body of information that will be examined and used as a guide for evaluation purposes is as follows:

- a. Only an independent *business* may be certified as a DBE. The **GUCP** considers an independent *business* as one whose viability is not dependent on its relationship with another firm or firms. In determining whether a potential DBE is an independent *business*, the **GUCP** will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

We will also consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. Further, we will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

The aforementioned will also be reviewed from the vantage point of whether the consistency of relationships between the potential DBE and non-DBE firms conform with normal industry practice.

DBE firm cannot be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

- c. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). (2) In a corporation, disadvantaged owners must control the board of directors. (3) In a partnership, one or more disadvantaged owners

must serve as general partners, with control over all partnership decisions. This is not intended to preclude individuals who are not socially and economically disadvantaged from being involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

- d. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals.

Such delegations of the **GUCP** will be examined by the **GUCP** to determine if they are revocable because the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such **GUCP** is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that **GUCP** can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

- e. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners will not be required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, The **GUCP** will not consider expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm as sufficient to demonstrate control. Where state or local law requires persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the **GUCP** will not deny certification solely on the ground that the person lacks the license or credential. However, we will take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

- f. The **GUCP** will consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice

concerning reinvestment of income, and any other explanations for the differences offered by the firm. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, we will consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

- g. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control.

However, an individual could be viewed as controlling a part-time **business** that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

- h. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the **GUCP** will make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as we do in other situations, without regard to whether or not the other persons are immediate family members. If we cannot determine that the socially and economically disadvantaged owners--as distinct from the family as a whole--control the firm, then the socially and economically disadvantaged owners will have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- i. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm will have to demonstrate to us, by clear and convincing evidence, that: (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.
- j. The **GUCP** will consider in all cases whether the applicant firm owns, rents or leases equipment necessary to perform its work. This will be done within the context of determining what is normal industry practice. Special attention will be given to those

rental, lease or purchase agreement that involve a relationship with a prime contractor or other party that compromises the independence of the firm.

- k. The **GUCP** will consider a firm for certification in only the specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm.

To become certified in an additional type of work, the firm will need to demonstrate to us that it is socially and economically disadvantaged owners are able to control the firm with respect to that type of work.

The **GUCP**, in this situation, will not require that the firm be re-certified or submit a new application for certification, but will verify the disadvantaged owner's control of the firm in the additional type of work.

- l. A business operating under a franchise or license agreement will have to meet all necessary requirements applicable to its defined legal form and the franchiser or licensor cannot be affiliated with the franchisee or licensee.

In determining whether affiliation exists, the **GUCP** will consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, to ensure that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. In addition, issues arising through affiliation such as common management or excessive restrictions on the sale or transfer of the franchise interest or license will also be explored.

- m. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability. Any said specific written concurrence would be obtained for the record to determine if there are any provisions that are not retractable by the socially and economically disadvantaged partners.

- n. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company will not necessarily preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as, ultimate responsibility for wage and tax obligations related to the employees.

The **GUCP** will review any and all prevailing employee leasing agreements within the parameters of industry practice, good business sense, and operational control of the firm and affiliation of the applicant firm with the employee-leasing venture.

- o. Other generic considerations that will be reviewed as an integral part of the certification determination process will include:
 1. Whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
 2. Whether an applicant firm is for profit. Only firms organized for profit may be eligible DBEs.
 3. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
 4. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. A firm that is not owned by such individuals, but instead is owned by another firm--even a DBE firm--cannot be an eligible DBE. If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, **GUCP** will certify the subsidiary if it otherwise meets all mandated certification requirements. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company. The **GUCP** will certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.

3. On Site Reviews

The GUCP will require the performance of an on-site to the offices of the firm requesting certification. The GUCP must interview the principal officers of the firm and review their résumés and/or work histories. The GUCP must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the investigation in the jurisdiction or local area.

CHAPTER G: Certification Procedures

SECTION 7.01 CERTIFICATION PROCEDURES (49 CFR 26.81)

A. GDOT uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. GDOT makes certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

*Patricia A. Flowers, EEO Assistant Administrator
Disadvantage Business Enterprise Program
One Georgia Center, 600 Peachtree Street, N.W.
Atlanta, Georgia 30308
Telephone (404) 631-1972
Fax (404) 631-1289
Email: pflowers@dot.ga.gov*

Our certification application forms and documentation requirements are found in Appendix Section in this program.

B. Uniform Certification Program (49 CFR 26.81 & 26.83)

The Georgia Department of Transportation and The Metropolitan Atlanta Rapid Transit Authority (MARTA) entered into a State of Georgia Unified Certification Program (known as the GUCP agreement). All applications, affidavit of no change forms and personal net worth for certification will be sent to Georgia DOT. Each item will be logged in and date stamped for data management by the GDOT DBE Administrator.

The GDOT Liaison Officer or DBE Administrator will inform MARTA and the Districts of pending certification applications for processing.

In responding to requests for information concerning any aspect of the DBE program, the GUCP complies with the provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a). The GUCP may make available to the public any information concerning the DBE program and certification will be release of which is not prohibited by Federal Law. The GUCP will not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. All requests must be filed with the GDOT. MARTA will be apprised of any requests and asked to provide input on how to respond, as needed.

This will be accomplished prior to said Freedom of Information requests being forwarded to the legal staff of the Georgia DOT for review.

The totality of the information collected will be measured against data obtained from the DBE on-site review of an applicant firm, as well as, their business location and job site visit. GDOT will thoroughly analyze information received and review information gained from the Disadvantaged Business Enterprise Certification Affidavit, as well as supplemental data, before actually conducting the on-site review.

The resulting on-site review and visit to job site report are then made an integral part of the applicant's file and is reviewed as a significant segment of the whole.

It will reflect the interview comments of the socially and economically disadvantaged individual(s) that have 51% or more of the ownership and control of the firm in question.

This report, in tandem with the certification standards data that has been gathered, will be organized in a ordered file that supports any DBE status recommendation put forth.

A certification file will be developed for each applicant firm. It will be submitted to the GUCP Administrator for review and concurrence. Upon the concurrence of the Administrator, an approval memo will be attached and data on the firm will be entered into the DBE computerized data bank maintained by the GUCP and a three-year certification letter can be developed for the signature of the Administrator and GDOT EEO Division Director.

If the recommendation is for denial by the Administrator, then a letter is generated to the firm as to the reasons for the denial. In the notification of denial, the applicant is advised of their appeal rights to the United States Department of Transportation. Firms denied certification would not be able to reapply for certification for one year from the date of the denial. The firm has ninety (90) days to appeal the decision the USDOT Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue, SE, W-35, Washington, D.C. 20590. If the U.S. DOT overturns the denial, the firm is certified.

In all instances, any proprietary and confidential information obtained from a firm that applies for certification with the GUCP will be safeguarded from disclosure to unauthorized persons. This practice will extend to and cover all information submitted by a firm for re-certification purposes and/or to acknowledge an 'Affidavit of No Change'. Affidavits of No Change must be submitted by applicant firms annually and they will address any change in circumstances affecting a firm's ability to meet size, disadvantaged status, ownership or control requirements, or any material change in the information provided in applicant's original application form. Applicant firms are required to attach a current financial statement, most recent tax return(s), current business license, and other supporting documentation which describes in detail the nature of specified material changes.

The Affidavit of No Change will take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.

The GUCP will send the of Affidavit of No Change form to all affected parties at least One Month prior to their anniversary date of certification. It will be the responsibility of each firm to submit this information to us every year before or on the anniversary of the date of their certification.

SECTION 7.02 REMOVAL OF DBE ELIGIBILITY (49 CFR 26.87)

The GUCP is responsible for removing a DBE's eligibility, when necessary. As a result, the GUCP will entertain written complaints from anyone who specifically delineates alleged reasons why a currently certified firm is ineligible. Such complaints must be addressed to the GEORGIA UNIFIED CERTIFICATION PROGRAM, Commissioner, located at One Georgia Center, 600 Peachtree Street, N.W., Atlanta, Georgia 30308. The GUCP will treat the identities of complainants with confidentiality as it re-examines its records concerning the firm, any material provided by the firm and the complainant, and other available information. In addition, the GUCP will request additional information from the firm or conduct any other investigation that it deems necessary. If the results of the review reveal that there is reasonable cause to believe that the firm is ineligible, we will provide written notice to the firm that we propose to find the firm ineligible, setting forth the reasons for the proposed determination. Should no reasonable cause exist for removal of DBE eligibility, we will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based. The re-examination of a firm's eligibility and the rendering of a determination will be completed as soon as possible.

Because it is anticipated that the GUCP and/or the Federal Department of Transportation may initiate independent removal of DBE eligibility proceedings for given reasons, the GUCP will immediately commence and prosecute a proceeding to remove eligibility as provided in the paragraph noted above, inclusive of an informal hearing.

In such a proceeding, the GUCP will bear the burden of proving, by a preponderance of the evidence, that the firm does not meet required certification standards. We will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing.

If there is an appeal to DOT, the GUCP will provide a transcript of the hearing to DOT and, on request, to the firm. The GUCP will retain the original record of the hearing and charge the firm only for the cost of copying the record.

If the firm elects to present information and arguments in writing, without going to a hearing, the GUCP bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as we would during a hearing.

Given that these proceedings need to be totally objective, GUCP will ensure that the hearing personnel did not take part in any actions leading to or seeking the removal of the affected firm's DBE eligibility. Under no circumstances will hearing personnel be subject to direction from the office or personnel who did take part in these actions. However, the decision-makers will be individuals who are knowledgeable about the certification requirements of our DBE program and the United States Department of Transportation's DBE regulation. Their decisions to remove eligibility will not be based on a reinterpretation or changed opinion of information available to us at the time of a firm's original certification. Their decision will only be based on one or more of the following: (a) changes in the firm's circumstances since the certification of the firm by the GUCP that render the firm unable to meet the eligibility standards; (b) information or evidence not available to us at the time the firm was certified; (c) information that was concealed or misrepresented by the firm in previous

certification actions by a recipient; (d) a change in the certification standards or requirements of the Department since we certified the firm; or (e) a documented finding that our determination to certify the firm was factually erroneous.

Following the decision, DOT will provide the affected firm written notice of the decision and the reasons for it, including specific references to data in the record. If the said determination is appealed to the United States Department of Transportation, GUCP's determination will maintain until it is overturned by USDOT.

SECTION 7.03 THIRD PARTY CHALLENGES

The GUCP will accept written complaints from any person, including GUCP partners, alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit any documentation in support of the complaint. The firm being challenged will be notified by the GUCP certifying member, in writing, of the challenge, the basic grounds, and the relevant regulations. The GUCP certifying member responsible for the certification shall thoroughly investigate the complaint, within a reasonable time, not to exceed sixty (60) days.

The GUCP shall notify the DBE in writing, via certified mail, of the preliminary findings. If reasonable cause to remove certification eligibility is found, the GUCP will notify the complainant of the specific grounds and inform the firm of the right to appeal the preliminary finding to the GUCP.

The U.S. DOT may notify the GUCP of reasonable cause to find a certified DBE firm to be ineligible and the GUCP shall immediately remove the certification eligibility of that firm.

SECTION 7.04 RECIPROCITY – STANDARDS AND PROCEDURES

The State of Georgia Unified Certification Program (GUCP) may elect to enter into a written reciprocity agreement with UCPs in other counties, cities, states and/or regions. The decision to execute such an agreement will be made by the GUCP.

CHAPTER H: RE-CERTIFICATION PROCEDURES

SECTION 8.01 PURPOSES (49 CFR 26.83)

The purpose of the recertification procedures is to establish guidelines which ensure consistency in DBE firms previously certified in the Georgia Unified Certification Program.

SECTION 8.02 RESPONSIBILITIES

The GUCP Administrator will be responsible for sending out advance notices for re-certification to DBE firms.

SECTION 8.03 AFFIDAVITS OF NO CHANGE (AONC) PROCEDURES

The Georgia Uniform Certification Program (GUCP) GDOT Administrator or designee reviews the DBE certification database at the end of each month to determine which certified DBE firms are scheduled for re-certification in the upcoming month. The firms will be given a thirty (30) day advance notice to submit an Affidavit of No Change, known as “AONC”, and Personal Financial Statement to the GUCP within thirty (30) days. If a DBE firm does not respond to the first request, a second request letter is issued after seven days advising the firm they have three weeks to submit the requested information (second notification). After ninety (90) days from the anniversary date, firms that have failed to respond will receive decertification letters and the firm will be decertified according to 49 CFR Part 26.109. All correspondence after the first letter will be sent via certified return receipt mail.

When the **GUCP** GDOT EEO Administrator receives the renewal Affidavit of No Change package from a previously certified DBE firm, this package is assigned to the certifying agency for review and processing. The re-affirmation assignment is recorded by the Administrator.

The certifying member reviews complete re-certification package for the following:

1. Completed DBE Affidavit of No Change Form (ANOC)
2. Current Personal Financial Statement (PFS)
3. Other documentation that reflects changes since the previous certification
4. Requests for additional information needed for DBE certification

CHAPTER I: D.B.E. DIRECTORY

SECTION 9.01 PURPOSES

The GUCP will be responsible for maintaining and publishing a Unified DBE Directory containing all the firms certified by the GUCP, including those from other states certified under the provisions of these procedures when the directory is updated and printed.

The Directory will be divided into three sections; contractors, consultants and suppliers. All firms are categorized by the use of the North American Industry Classification System (NAICS) codes. GDOT provides access, electronically, to the public and GUCP partners for review and printing from a read-only format.

SECTION 9.02 AIRPORT CONCESSIONNAIRES

The GUCP will confer on any airport concessionaires that opt to apply for DBE certification. The airport concessionaire will be required to submit all information of a DBE applicant except a Personal Financial Statement. All other requirements will be applicable and will have to be met as defined in 49 CFR Parts 23 and 26, with the City of Atlanta Contract Compliance Office.

SECTION 9.03 HOME STATE ON SITE REVIEWS

In order for an out of state firm to be considered for DBE certification by the Georgia Unified Certification Program, said firm must be certified by their home state. The GUCP will contact the DBE applicant's home state UCP and solicit documentation, on-site and job site review reports, and other information as needed to expedite a firm's certification consideration. The GUCP reserves the right to request more information, on-site and job site review data from an applicant beyond what is in their home state review file, if required.

CHAPTER J: COMPLAINT POLICY

SECTION 10.01 COMPLAINT POLICIES

It is the policy of GDOT to investigate any and all submitted complaints from DBE's, Non-DBE's, against contractors and consultants who believe they have been unlawfully discriminated in their contract obligation on a federally funded project, for business or employment, as a result of their race, color, and national origin. DBEs and Non-DBE complainants may file and process a complaint without fear of unlawful discrimination or retaliation.

I. Eligibility

All Department of Transportation DBE's, Non-DBE's, Contractors and Consultants are eligible to file a complaint alleging unlawful discrimination as provided for in this procedure except as follows:

- A. Complainants who have been terminated and have specific rights of appeal under the DBE Program;
- B. Contractors who are seeking relief for the complaint through other administrative or judicial procedures.

II. General Provisions

A. Forfeiture of Complaint Rights

If the complainant fails to proceed within 180 days, it shall constitute a waiver of their rights to proceed further under this procedure unless an extension is granted by the Commissioner or his designee.

B. Management's Obligation to Respond

If any official in the complaint procedure fails to render a decision within the time limits set forth in any step of this complaint procedure, the complainant will have 180 days to proceed to the next step in this procedure. This ninety (90) day period shall begin the day following the date on which the official's time for decision expired.

C. Assistance in Processing

In no case shall the staff assigned to investigate the complaint assist any employee or be a party to the complainant. In such cases of conflict, the District Engineer or Office Head should recommend a replacement contact.

The Equal Opportunity Division Director or Administrator shall have authority to resolve any dispute regarding reasonable and necessary time for processing a complaint.

D. Withdrawal of the Complaint

At the sole discretion of the complainant, a complaint may be voluntarily withdrawn at any point in the procedure. The complaint shall be considered terminated and processing shall end.

E. Group Complaint

If two or more complaints are registered on a common issue they may submit a group complaint, indicating not more than two (2) participating complainants as spokespersons for the group. The filing of a group complaint eliminates the right of a complainant to appeal that complaint on an individual basis. The Equal Opportunity Division Director or his designee may consolidate (a) separate complaints filed by two or more employee's complaint regarding the same issues or (b) multiple complaints, independent of their relatedness, filed by the same contractor.

F. Emergency Provisions

The Commissioner may suspend the complaint in whole or part for eligible standard or Department procedures.

G. Complaint Review Officials Pool

The Equal Opportunity Division Director or Administrator shall select a Review Official to hear the Complaint. District Review Officials may hear complaints filed by contractors that work in the same districts as the Review Official.

SECTION 10.02 PROCEDURES

A Complaint must be filed within 180 days of the occurrence upon which the complaint is founded, or within 180 days of the date the complainant became aware, or should have become aware, of the problem through the exercise of reasonable diligence.

The Complaint shall contain a written statement of the issues involved and explain how the complainant's has been unfavorably affected; the relief sought; and the date(s), if known, that the incidents or violations occurred.

If the complaint involves interpretation or application of rule or policy, the complaint shall identify the rule or policy at issue and describe the manner in which it was erroneously, arbitrarily, or capriciously interpreted or applied.

Equal Opportunity Office Response

Attempt to resolve the issues by facilitating an exchange of information between the parties, clarifying and/or interpreting rules or policies or exploring alternative resolutions. Efforts by Equal Opportunity Office staff to resolve the issue may include, among other activities, review of documents and interviews with the complainant, the contractors, or other parties possibly having knowledge pertinent to the complaint to identify, investigate and review facts and issues germane to the complaint. Equal Opportunity staff may meet with parties to the complaint individually and/or in a group in attempting to resolve the issues. If, in the view of the Equal Opportunity Division Director or Administrator, any party is uncooperative at this step, the Equal Opportunity Division Director or Administrator may withdraw the complaint from further processing and proceed directly to submission of a recommendation to the Commissioner for final action.

Unable to Resolve

If the E.O. Office is unable to resolve the issues within 180 days or if a satisfactory resolution does not result from the dispute resolution, the parties shall be notified. The matter may be referred to Legal Affairs for further handling.

The Commissioner shall review the findings and recommendations(s) of the DOT.

CHAPTER K: COMPLIANCE AND ENFORCEMENT

Section 11.01 Compliance with Title VI of the Civil Rights Act of 1964 for Federal-Aid Contracts

During the performance of Contractual agreements, the Contractor(s) or Consultant(s), its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. Compliance with Regulations: The Contractor will comply with GDOT's regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made part of this Contract.
- B. Nondiscrimination: The Contractor, with regard to the work performed by it afterward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors including procurements of materials and leases of equipment.
- C. The Contractor will not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations; including employment practices when the contract covers a program set forth in Appendix B of the Federal Regulations 49 CFR Part 26 (located in the Appendix Section of Plan). In addition, the Contractor will not participate, either directly or indirectly, in discrimination prohibited by 23 CFR 200.9 (see Appendix Section).
- D. Sanction for Noncompliance:
 - (1) In the event the Contractor is found in non-compliance with the nondiscrimination provisions of this Contract, GDOT shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to the Contractors under the Contract until the Contractor complies, and/or
 - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
 - (2) In accordance with 49 CFR Part 26.103, any person who thinks GDOT is not in compliance with the provisions of this program may file a complaint with the United States Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE W-35, Washington, D.C. 20590.

E. Incorporation of Provisions: The Contractor will include the provisions of paragraphs (a) through (d) of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instruction issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as GDOT or the Federal Highway Administration may direct as means of enforcing such provisions including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

Section 11.02 Enforcement Actions under the DBE Program

- A. If you are a firm that does not meet the eligibility criteria of Article IV of this part and that attempts to participate in a federally-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, GUCP may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law
- B. If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of Article IV of this part, the Department may initiate suspension or debarment proceedings against you in accordance with federal and state law.
- C. The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, or to the State Attorney General for prosecution under O.C.G.A. Section 16-20-10, any person who makes a false or fraudulent statement to a State agency in connection with participation of a DBE in any federally-assisted program or otherwise violates applicable Federal or State statutes.

CHAPTER L: CONFIDENTIALITY, INTIMIDATION & RETALIATIONS

Section 12.01 Rules Governing Information, Confidentiality, Cooperation, intimidation and Retaliation.

- A. **Availability of records.** (1) In responding to requests for information concerning any aspect of the DBE program, GDOT complies with provisions of the Georgia Open Records Act, 50-18-70, et seq. The Department may make available to the public any information concerning the DBE program, release of which is not prohibited by Georgia or Federal law.
- B. **Confidentiality** of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.
- C. **Cooperation.** All participants in GDOT's DBE program (including, but not limited to, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by the U.S. Department of Transportation or GDOT. Failure to do so shall be a ground for appropriate action against the party involved.
- D. **Intimidation and retaliation.** No contractor or any other participant in the program is allowed to intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.
1. Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint.
 - (i) The complainant shall present the complaint in written form to the Equal Opportunity Division Director or to the Equal Opportunity Administrator.
 - (ii) The Equal Opportunity Director and/or Equal Opportunity Administrator will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the attention of the Federal Highway Administration (FHWA), United States Department of Transportation, United States Department of Justice, or other federal authority, as applicable.

- (iii) The Equal Opportunity Director and/or the equal opportunity Administrator will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings and his rights during said proceedings.
- (iv) The Equal Opportunity Director and/or the Equal Opportunity Administrator will immediately notify the administrative head of the operational unit and Federal Highway Administration of the complaint, and will conduct an investigation within thirty (30) working days.
- (v) Within fifteen (15) days of completing the investigation, the Equal Opportunity Director and/or the Equal Opportunity Administrator shall submit a written report to the administrative head of the operational unit, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the Federal Highway Administration.
- (vi) All documentation relating to the complaint shall be maintained in the Office of the Equal Opportunity for a period of five (5) years.

2. Violation of this prohibition will constitute noncompliance with this part.

CHAPTER M: APPENDIX SECTION

Attachment 1

[Georgia DBE UCP Program Application](#)

[Personal Financial Statement](#)

[DBE Uniform Certification Supporting Checklist](#)

[No Change Affidavit](#)

Attachment 2

[D.B.E. Directory](#) (Sample only)

Attachment 3

[Flow Chart of DBE Certification Process](#)

[Organization Charts](#) (Revised Effective June, 2009)

Attachment 4

[Federal Regulations with Appendixes – 49 CFR Part 26](#)

Attachment 5

DBE Goal Setting Methodology

- [Pages 1-5](#)
- [Pages 6-10](#)
- [Pages 11-15](#)
- [Pages 16-20](#)
- [Pages 21-27](#)

Attachment 6

[Historically Black Colleges](#)

Attachment 7

Sample of Bidder's List

- [Sample A](#)
- [Sample B](#)

Attachment 8

GDOT's Criteria for Eligibility

Attachment 9

[Title VI Program & Related Statutes – 23 CFR 200.9](#)

Attachment 10

[GDOT Policy – DBE Goals Committee Guidelines](#)

Attachment 11

[GDOT Disadvantaged Business Enterprise Criteria for Acceptability](#)

Attachment 12

[Commercially Useful Function Form \(CUF\)](#)

Attachment 13

[Prompt Payment Provision](#)

Attachment 14

[GDOT Appeal Hearing Policy Statement](#)